

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DARKPULSE, INC.,

Plaintiff,

v.

FIRSTFIRE GLOBAL OPPORTUNITIES
FUND, LLC and ELI FIREMAN

Defendants.

Index No. 1:21-cv-11222 (ER)

**DECLARATION OF AARON H. MARKS IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, Aaron H. Marks, hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner of the law firm of Kirkland & Ellis LLP, counsel of record for Defendants FirstFire Global Opportunities Fund, LLC (“FirstFire”) and Eli Fireman in the above-captioned action. I submit this Declaration in support of Defendants’ Opposition to Plaintiff’s Motion for a Preliminary Injunction. I make this Declaration based on my own personal knowledge.

A. DPLS Common Shares

2. According to DPLS’s own website, <https://ir.darkpulse.com/stock/>, DPLS’s stock is a penny stock not listed on a major exchange, but that rather trades through OTC Pink, one of OTC Market Group’s platforms.

3. DPLS’s public filings indicate that as of September 30, 2021 there were nearly five billion (4,922,968,442) shares of DPLS common stock issued and outstanding, and DPLS has

authorized a total of twenty billion (20,000,000,000) shares of common stock for issuance. Attached hereto as **Exhibit G** is a true and correct copy of DPLS's Form 10-Q for the quarterly period ended September 30, 2021, filed with the SEC on EDGAR on November 15, 2021.

4. According to yahoo! finance and DPLS's own website, <https://ir.darkpulse.com/stock/>, as of January 14, 2022, DPLS shares closed trading at a price of approximately \$0.05, and have a 52-week price range of \$0.0014 to \$0.202—the high of the range being about 144 times the low.

5. According to the figures contained on DPLS's own website, in the 42 trading days between November 18, 2021 and January 14, 2022, the period between FirstFire's conversion and DPLS filing this motion, over 1.178 billion DPLS common shares were traded—for an average daily trading volume of 28.04 million shares per day during this period.

6. Over the ten trading days preceding FirstFire's conversion pursuant to the Note, there was an average daily trading volume of 36.08 million DPLS common shares per day.

B. DPLS's History of Issuing Convertible Notes

7. According to DPLS's public filings, DPLS hired a registered broker-dealer and paid a finder's fee of \$15,000 to the broker-dealer, who found FirstFire to enter into the Note. Attached hereto as **Exhibit H** is DPLS's Form 8-K filed with the SEC on EDGAR on May 5, 2021.

8. DPLS's public filings reflect that between July 2018 and July 2021, DPLS entered into 20 different convertible notes with multiple investment funds—including the note issued to FirstFire on April 26, 2021 (the "Note") that is the subject of this dispute. Attached hereto as **Exhibit I** is a true and correct copy of DPLS's Form 10-K for the fiscal year ended December 31, 2018, filed with the SEC on EDGAR on April 14, 2019. Attached hereto as **Exhibit J** is a true and correct copy of DPLS's Form S-1/A Registration Statement, filed with the SEC on EDGAR on December 8, 2021.

9. On 36 separate occasions in 2020 and in 2021, DPLS issued significant volumes of shares of common stock upon the conversion or partial conversion of convertible promissory notes by their holders. (**Exhibit J**, DPLS Form S-1/A at II-3-II-5.)

10. In total, in 2020 and 2021, DPLS, through its transfer agent, issued over 3,545,380,000 common shares in connection with these 36 note conversions, including the 177,375,000 common shares issued to FirstFire on November 17, 2021. (*Id.*)

11. Each of the convertible notes entered by DPLS (and the convertible notes' attendant DPLS common shares) are disclosed in DPLS's public filings beginning the date the notes are entered. (*See id.*)

12. Additionally, on December 13, 2021, DPLS filed a prospectus registering 300 million shares of its common stock for sale by GHS Investments LLC, noting that common stock outstanding prior to the offering totaled 5,154,044,407. Attached hereto as **Exhibit K** is DPLS's Form 424B4 filed with the SEC on EDGAR.

C. Lawsuits Filed By DPLS

13. According to DPLS's public filings, on May 13, 2021, two weeks after entering into the Note with FirstFire, DPLS filed a motion in its action against another investment fund with which DPLS entered into a convertible note, Carebourn Capital, L.P., "arguing that Carebourn is conducting itself as an unregistered dealer, in violation of Section 15(a) of the Securities and Exchange Act of 1934 (the "Act"), and, pursuant to Section 29(b) of the Act, the Company is entitled to have all contracts arising under the unlawful securities transaction declared void ab initio and seek rescissionary damages for any unlawful transactions effected by Carebourn"—the same arguments to rescind the Note that DPLS now makes here. (**Exhibit G**, DPLS 10-Q at 25.)

14. DPLS is litigating a similar case against More Capital, LLC (*id.* at 26), and on January 4, 2022, DPLS initiated an action against EMA Financial, LLC and a related entity and individual that is almost identical to this Action. *DarkPulse, Inc. v. EMA Fin., LLC, et al.*, Case No. 1:22-cv-00045 (S.D.N.Y. Jan. 3. 2022).

15. It appears to be DPLS's pattern and practice to enter into convertible notes with investment funds, to receive the cash funding thereunder, and then seek to void or rescind the notes in frivolous litigation—in which DPLS even suggests that it had no prior knowledge of the allegations of unlawfulness that it is making.

D. The Delaware Action and this Action

16. On December 13, 2021, weeks after DPLS first demanded that FirstFire return the shares converted pursuant to the Note, FirstFire filed a complaint in the Delaware Chancery Court concerning this same dispute regarding the Note and seeking a declaration that the November 17 conversion was proper and that FirstFire was entitled to the 177,375,000 share of DPLS common stock it received in connection with the conversion (“the Delaware Action”).

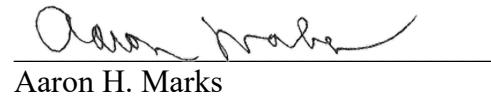
17. On December 31, 2021, instead of responding to the Delaware Action, DPLS initiated this Action.

18. Upon filing this Action, DPLS issued a press release, a true and correct copy of which is attached hereto as **Exhibit L**.

19. DPLS has entered its appearance in the Delaware Action, and on January 14, 2022, the Delaware Chancery Court entered a scheduling order in the Delaware Action, providing for a February 4, 2022 deadline for DPLS to respond to the complaint and setting an April 13, 2022 hearing date for any motion that DPLS may file. *FirstFire Glob. Opp. Fund LLC v. DarkPulse, Inc.*, C.A. No. 2021-1082-LWW (Del. Ch. Dec. 13, 2021).

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 19, 2022 in Westchester County, New York.



Aaron H. Marks